

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

DANIEL LEWIS LEE,)	
)	
Petitioner,)	
)	
v.)	No. 2:19-cv-00468-JPH-DLP
)	
WARDEN USP TERRE HAUTE,)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	

MOTION TO EXTEND TIME TO FILE RESPONSE

Respondents in the above-captioned case respectfully request a 28-day extension of time, until November 8, 2019, to file their response to petitioner Daniel Lewis Lee's petition for a writ of habeas corpus. In support of this motion, the undersigned states as follows:

1. Petitioner Daniel Lewis Lee was convicted of three counts of capital murder and sentenced to death in 1999. The United States has scheduled Lee's execution for December 9, 2019.

2. Lee's conviction and sentence have received extensive review by the Eighth Circuit and the United States District Court for the Eastern District of Arkansas. *See, e.g., United States v. Lee*, 792 F.3d 1021 (8th Cir. 2015), *cert. denied*, 137 S. Ct. 1577 (2017); *United States v. Lee*, No. 97-CR-

243, 2014 WL 1093197 (E.D. Ark. Mar. 18, 2014); *United States v. Lee*, 715 F.3d 215 (8th Cir. 2013), *cert. denied*, 135 S. Ct. 72 (2014); *United States v. Lee*, No. 97-CR-243, 2010 WL 5347174 (E.D. Ark. Dec. 22, 2010); *United States v. Lee*, No. 97-CR-243, 2008 WL 4079315 (E.D. Ark. Aug. 28, 2008); *United States v. Lee*, 374 F.3d 637 (8th Cir. 2004), *cert. denied*, 545 U.S. 1141 (2005); *United States v. Lee*, 274 F.3d 485 (8th Cir. 2001), *cert. denied*, 537 U.S. 1000 (2002); *United States v. Lee*, 89 F. Supp. 2d 1017 (E.D. Ark. 2000).

3. Most recently, on February 26, 2019, the district court in the Eastern District of Arkansas denied a motion by Lee for relief under 28 U.S.C. § 2255, and on May 7, 2019, the court denied a motion for reconsideration. Lee has applied for a certificate of appealability in the Eighth Circuit, and on September 12, 2019, that court ordered the government to respond on or before October 7, 2019. *See Lee v. United States*, No. 19-2432 (8th Cir.). The government filed its response on that date.

4. Lee also has joined a lawsuit in the United States District Court for the District of Columbia challenging the Department of Justice's death penalty protocol. Lee has filed a motion for preliminary injunction in that case seeking to stay his execution. *See In re Federal Bureau of Prisons' Execution Protocol Cases*, 1:19-mc-00145, Dkt. 13 (D.D.C. Sept. 27, 2019).

5. On September 26, 2019, Lee filed a petition for a writ of habeas

corpus under 28 U.S.C. § 2241 in this Court. Dkt. 1. The following day, the Court ordered respondents to file a response within 14 days, on or before October 11, 2019. Dkt. 6.

6. After receiving Lee's petition, the United States Attorney's Office for the Southern District of Indiana contacted other offices in the Department of Justice handling different matters involving Lee. After consultation, it was determined that responsibility for responding to Mr. Lee's habeas petition would be transferred from the United States Attorney's Office for the Southern District of Indiana to the Department of Justice's Criminal Division in Washington, D.C., and the United States Attorney's Office for the Eastern District of Arkansas, where Lee was convicted and sentenced. John M. Pellettieri from the Criminal Division's Appellate Section and Michael Gordon, Criminal Chief in the United States Attorney's Office for the Eastern District of Arkansas, have been assigned to handle the response.

7. Mr. Pellettieri and Mr. Gordon had previously-existing responsibilities that prevented them from turning their full attention immediately to this case. Among other things, Mr. Pellettieri drafted and filed a court-ordered response to Lee's application for a certificate of appealability in the Eighth Circuit, *see* Brief, *Lee v. United States*, No. 19-2432 (8th Cir.) (filed Oct. 7, 2019), and Mr. Gordon was in trial on October 1

and 2, 2019.

8. Because of the length and detail of Lee's petition and the prior responsibilities of the attorneys assigned to respond to that petition, respondents respectfully request an extension of 28 days to prepare and finalize their response.

9. No prior extensions of time have been requested by respondents, and this extension is requested to allow sufficient time to prepare a complete and appropriate response to Lee's claims and not for any purpose of delay.

Wherefore, respondents respectfully request that the Court grant this motion for a 28-day extension, until November 8, 2019, to file respondents' response to Lee's habeas petition.

Respectfully submitted.

s/John M. Pellettieri
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October 8, 2019

CERTIFICATE OF SERVICE

I certify that on October 8, 2019, a copy of the foregoing was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

s/John M. Pellettieri
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